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No. 758

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

PAUL NEHRING, JR.,

Plaintiff-Appellant,

vs.

CITY OF DE KALB, COUNTY OF DE KALB, V. H. GRANDGEORGE, MAY PENROD, J. CLAYTON POOLER and C. A. BORINE,

Defendant-Appellee.

On Appeal from the Supreme Court of Illinois

JURISDICTIONAL STATEMENT

With necessary motions so that the appellant is heard in conformity with the provisions of the 14th amendment.

PAUL NEHRING, JR.
335 College Avenue,
De Kalb, Illinois
Telephone: 756-3808
Appellant, Pro Se.

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Appellant appeals from the dismissal of this cause by the Supreme Court of the State of Illinois, entered on the 29th day of November, 1965, and submits this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

OPINION BELOW

The decision of the Supreme Court of the State of Illinois is reported at page 27 of the transcript of record and repeated in appendix "A" of this document.

JURISDICTION

This suit was brought in the Circuit Court of DeKalb County, Ill. The Judge, who had a personal interest in the case and should have disqualified himself, sustained the beneficiaries motion to dismiss. Motion for leave to amend was denied. Notice of appeal was made and the record filed in the Appellate Court for 2nd district of Illinois, the abstract was filed timely, and an extension of time was asked to file the brief, the Brief was presented to the court, with a motion to accept it, and one day after the order was issued denying the extension of time. The appellant then asked for permission for leave to appeal within one year, which was timely, and the Appellate Court sent the record to the Illinois Supreme Court who sent it back to the Appellate Court, and they claim they sent it back to the Supreme Court, but the record from the Supreme Court filed with this statement does not include the brief and abstract (altho the order (R. 27) says they have a record. The appellate court says they have destroyed all copies of the briefs and abstracts.

The appeal here will only be made on the basis of intentional violation of the 14th amendment by all courts. There being no record, of a brief or abstract without mandamus issuing from this court; unless the motion hereinafter set forth is granted; the appellant will request this court, hereinafter, as an alternate that this court order a hearing on the conduct of the judges under Article VI section 18 of the Illinois Constitution.

U. S. CONSTITUTIONAL PROVISION INVOLVED

U. S. Constitution, Amendment XIV, Section 1:

"• • • nor shall any State deprive any person of • • • property, without due process of law • • •."

Illinois Constitution, Article VI, Section 18:

> "• • • has provided by law for the retirement of judges automatically at a prescribed age, and subject to rules of procedure to be established by the Supreme Court and after notice and hearing, any judge may be retired for disability or suspended without pay or removed for cause by a commission composed of one judge of the Supreme Court on complaint of any person • • •" S.H.A. Ill. Rev. Stats., page 150, revised after printing.

QUESTION PRESENTED

The question presented in the trial court was whether or not an ordinance of the City of DeKalb could be used to perpetuate a new judge for life in DeKalb County of the State of Illinois, about one month before it could not be done by a statute which would prevent it.

STATEMENT

This is a complaint by Paul Nehring, Jr., a taxpayer residing in the City of DeKalb, Illinois, in DeKalb County, a county of a population of 51,714, contesting the validity of an ordinance of said city passed on September 9, 1963, and amended October 2nd, 1963 to provide for a specific election to be held November 26, 1963, to fill a vacancy in the City Court of said city and for other relief. The grounds alleged are that said county already had a county judge who would automatically become an associate circuit judge upon the new judicial system becoming effective and the vacancy in said City Court sought to be filled existed since December 3, 1962, almost a year prior to the date for the special election and the additional judge was not needed for the latter and other reasons stated, that said election was held merely to provide an extra judge who would automatically become an Associate Circuit Judge under said new system and that said election was contrary

to the intention of the legislature in House Bill 629 enacted to prevent the election of unnecessary judges said bill providing that in counties of less than 60,000 population vacancies for associate judge shall only be filled where there is no other resident associate judge. It is the theory of plaintiff's case that said House Bill 629 was approved on August 9, 1963 and even though it did not become effective until January 1, 1964 said election of November 26, 1963 was to evade and circumvent the clearly expressed intention of the legislature as manifested in said bill and in other Acts such as the Act approved and effective March 6, 1963, long prior to said election, amending "An Act in Relation to courts of record in cities, villages and incorporated towns" which latter act clearly indicated that no city courts and by implication judges to fill them should be created after the latter date especially when the city court had became inoperative and dormant.

The Questions Are Substantial.

It was the intention of the Legislature that cities, villages and incorporated towns in the exercise of their powers should create no unneeded judges as same would further increase salary expenditures from an already burdened state treasury and that in pursuance thereof in counties of less than 60,000 inhabitants where there already is a judge who will become an associate circuit judge under the new system a long existing vacancy should not be filled which would result in another associate judge in the county who is not needed under conditions which have developed since long prior to the vacancy.

House Bill 629 (Chapter 37, sec. 72.41 Rev Stats. 1963) (See Appendix B, App. 2) An Act relating to vacancies in the office of associate judge:

"Section 1. Except as provided in sub-paragraphs (1), (2) and (3), vacancies in existence and vacancies occurring on or after January 1, 1964 in the office of associate judge in any county or unit of any circuit shall not be filled:

(1) If in any county of less than 60,000 inhabitants there remains in office no other resident associate judge following the occurrence of a vacancy, such vacancy shall be filled. * * *.

Approved Aug. 9, 1963
In Effect Jan. 1, 1964."

House Bill 10 (Pages 46-47 of Laws of Ill. Seventy-Third Gen. Assembly 1963) (See Appendix A. App. 1) An Act to Repeal Section 21 of "An Act in relation to courts of record in cities, villages and incorporated towns" and adding Section 21: 1 thereto, approved March 6, 1963 and Effective same date as an emergency.

"Section 3. Whereas, on January 1, 1964 the extensive amendments to Article VI, the Judicial Article, of the Illinois Constitution will take full effect; and whereas, under the amended provisions of Article VI all city, village and incorporated town courts will be integrated into the appropriate circuit courts and all city, village and incorporated town court judges in office on January 1, 1964 will become associate judges of such circuit courts; and whereas, the creation prior to January 1, 1964 of new city, village and incorporated town courts will result in additional judges being carried over into the new system when in fact, because of the new powers for efficient management of judicial manpower granted by the amended Article to the Supreme Court, such additional judges will not be needed; and whereas, the addition of unneeded judges would further increase salary expenditures from an already burdened state treasury; therefore, an emergency exists and this Act shall take effect upon its becoming a law.

Approved and in Effect
March 6, 1963."

The appellant contends that the questions are substantial and in view of the fact that there is no brief or abstract unless this court will grant the motion the appellant sets forth the points and law as he raised it in the lost brief.

Municipal ordinances must conform to the power delegated by the legislature and when contrary to legislative intent are invalid whether such intent is expressed or effected previously or subsequently in point of time.

Natural Milk Producers Ass'n et al. v. *City and County of San Francisco et al.* (Supreme Court of California 1942); 124 P. 2d 25, 29 (vacated on other grounds in 317 US 432);

Ex parte Smith (Calif. Dist. Ct. of Appeal, Third Dist. 1914) 146 P. 82;

State ex rel. Dwyer v. *Nolte* (Supreme Court of Missouri 1943), 172 S. W. Reporter 2d 854, 856.

In determining the scope of the power of municipalities under state statutes it is the current legislative intent that is the primary question, irrespective of priority of the statutory enactments.

E. N. Radford etc. v. *Cosmopolitan Nat. Bk.* (Appellate Court of Illinois, First District, 1964) 201 NE 2d 622, 624, 625;

People ex rel. Dickey v. *Southern Railway Company* (Supreme Court of Illinois), 17 Ill. 2d 550, 554, 162 NE 2d 417, 420;

Changed conditions may require a new interpretation of the applicable statutes.

Chicago v. *Cuda,* 403 Ill. 381, 385, 386;
Parks v. *Libby-Owens-Ford Glass Co.,* 360 Ill. 130;
Boshuizen v. *Thompson & Taylor Co.,* 360 Ill. 160;
People v. *Bruner,* 343 Ill. 146.

In *Natural Milk P. Ass'n.* v. *City and County of San Fran.,* 124 P. 2d 25 (1942), vacated on other grounds in 317 US 423, the Supreme Court of California said on page 29:

> "It is true, as a general rule, that when there is a conflict between the local police regulations and the general police regulations of the state, the former is invalid if passed after the general law or is superseded if followed by the latter. In either case the result is the same, the local law has no effective force."

In *Ex parte Smith,* 146 P 82, the California District Court of Appeal, Third District (1914), said on page 85:

> "There may be a conflict where the Act of the Legislature follows as well as where it precedes the local ordinance. It is immaterial how or when the conflict arises • • •."

In *State* v. *Nolte,* 172 SW 2d 854, the Supreme Court of Missouri (1943) said on p. 856:

> "'When the ordinances or charter provisions are or become in conflict with prior or subsequent state statutes, such ordinances or charter provisions are or become void and must yield to the higher law'. *State ex rel. Volker et al.* v. *Carey,* 345 Mo. 811, 136 SW 2d 324, 325. See also *Tremayne* v. *City of St. Louis,* 320 Mo. 120, 6 SW 2d 935 • • •."

Neither does it matter that several legislative acts are involved which were passed at different times. The present intention of the legislature is paramount and that is what counts.

In *E. N. Radford etc.* v. *Cosmopolitan National Bank of Chicago,* 201 NE 2d 622, the Appellate Court of Illinois, First District (1964) said on pages 624 and 625:

There is an additional brief filed and part of the record (R. 25) and a subsequent motion to have the item raised in the lower court properly reach the Illinois Supreme Court, which the appellant contends is a very substantial question.

The people of Illinois were informed that section 18 of Article VI of the constitution would, after the year 1964, have any means whereby and citizen could make a complaint about a Judge, who in Illinois must be an attorney, who shall never commit an act that has the appearance of fraud.

It is obvious that starting at the lower court and coming thru the Appellate Court of the 2d District of Illinois, and then the Illinois Supreme Court, all attornies "in whose integrity the public and the courts have a vital interest," somewhere along the line a considerable number of persons do not understand what integrity actually means, as no one except the appellant seems to make any effort to see that at least one of the too many judges in DeKalb County, Illinois is taken off the public payroll. (Two have passed away since this action started.)

With the record that is approved by the Supreme Court this is as far as this jurisdictional statement can go, and not impose upon this court.

It is respectfully submitted that the Illinois Supreme Court could not make a decision on the material presented to it, and that with this rendition or presentation, it is requested that this court send the cause back to the lower court on what has been stated or after considering what is written in the motion.

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NECESSARY MOTION NEEDED TO BE HEARD IN CONFORMITY WITH THE PROVISIONS OF THE 14TH AMENDMENT.

Now comes the Appellant Paul Nehring, Jr., and moves this court to accept the provisional amendment to the record that accompanies this jurisdictional statement, to be used at a later date as an alternate jurisdictional statement if this court is not satisfied that there is sufficient material heretofore presented.

The appellant further moves this court to send the cause back to the Circuit Court of DeKalb County at this time, and in support of both items he attaches his affidavit with suggestions.

AFFIDAVIT WITH SUGGESTIONS IN SUPPORT OF THE MOTION HERETOFORE SET FORTH.

Now comes Paul Nehring, Jr., the appellant herein, and referring to himself as the affiant says:

That at the time this action started on a basis of population there were seven too many judges in what is known as the 16th Judicial District of Illinois, three of whom were from DeKalb County, when that County was only to have two, and the affiant did not want the illegal acts of the local politicians to have three judges receive salaries when only one should have. No trial was held but if it had been the exhibits set forth in additional brief (R. 25, pages 9 to 12 inc.) would have been part of the evidence, which would not have been necessary as in making the motion to strike it has been admitted that what the defendants did for the benefit of an attorney who wanted to be a judge was to violate the intent of a state statute, designed and enacted to prevent what actually occurred. This was set up in the affiant's brief on page 1 of the provisional record, on pages 9 to 14 inclusive. The men who wanted that judge who

could not be legally elected were lawyers (R. 22). However as only two judges should have been elected from DeKalb, one could have been eliminated, which could include the judge who dismissed the cause on a motion that necessary parties were not included, but does not state who should have been added, and that a duty not performed for many months had to be done just before it was unnecessary because the law contemplated two judges from DeKalb County not three. (P.R. 1 page 7.)

Provisional record 2 sets forth that the affiant has done all that he can to get a record and PR 3 shows that the record does not exist—however the affiant wants this court to note that he did not state anything different than the order of the Honorable Tom C. Clark shows.

The provisional record shows that the Appellate Court does not agree with the Supreme Court, the latter saying that three volumes went to Mrs. Searcy, and Mrs. Searcy says the briefs and abstracts are non-existent.

It is obvious that if this court issued a writ of mandamus to bring the abstracts and briefs here to the clerk of either court, they would not comply with the production of the abstract. PR. 5.

The affiant does not believe that at this late date, this court should spend too much time on deciding that the actions of the Judges on the Illinois Supreme Court and the courts below that level were all working to the end that a counsel who should not have been a judge is a judge in a County with too many judges in violation of the intent and purpose of Illinois law because all judges involved violated the 14th amendment to see that this layman was not heard, and this court can see that he is, by the simple expedient of sending it back to the lower court solely on the basis of one statement by the Illinois Supreme Court that they have a record R. 27 (in long hand)

the Appellate Court says they had a record, P.R. 4, and record 10 says the record was sent, and the order allowing the filing of the additional brief has also failed to show up in the record.

As this court has ruled that "silence can be fraud" the record here and the transferring of the record back and forth between the Supreme and Appellate Courts (R. 7 to 10 inclusive) while figuratively silent, actually shrieks that the higher courts of Illinois were and are unwilling to let the world know that the lawyers arranged to see that too many judges got on the bench in DeKalb county, and they are not going to let a layman prove it.

His Honor Clark for public consumption has invited laymen to help the courts, and this affiant is trying to do that item, and this full court should aid him.

Respectfully submitted,

PAUL NEHRING, JR.

County of DeKalb)
State of Illinois .)

Paul Nehring, Jr., being duly sworn on oath deposes and says that he wrote the foregoing motion by him subscribed and the facts stated in it are of his own knowledge and are true in substance and in fact, and the exhibits 1 and 4 are respectively true and exact copies of the brief and abstract given to the clerk of the court mentioned, who says that they keep the items for a year before they destroy them but for some unknown reason they did not in this case.

Subscribed and sworn to before me this 3 day of November 1966.

/s/ Anne Friedman
Notary Public
(Seal)

APPENDIX

IN THE SUPREME COURT OF THE STATE OF ILLINOIS
In Vacation
After The November 1965 Term

PAUL NEHRING, JR.,
vs.
CITY OF DEKALB,
No. 39309

ORDER
(Filed Nov 29 1965)

This case is here on appeal from the Appellate Court. There is no constitutional question presented and there is no basis for this court's jurisdiction. On the Court's own motion the appeal is dismissed.

/s/ Ray Klinghiel
Chief Justice